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CARLOS E. KEPKE

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16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA
18 SAN FRANCISCO DIVISION

19 UNITED STATES OF AMERICA,
20
21 Plaintiff,
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23 v.
24 CARLOS E. KEPKE,
25
26 Defendant.

Case No. 3:21-CR-00155-JD

**REPLY IN SUPPORT OF CARLOS
KEPKE'S MOTION *IN LIMINE* TO
EXCLUDE EVATT TAMINE
TESTIMONY, STATEMENTS, AND
EVIDENCE, OR IN THE
ALTERNATIVE, TO CONTINUE
TRIAL**

Date: November 21, 2022
Time: 1:30 p.m.
Courtroom: 11, 19th Floor
Judge: Hon. James Donato

MEMORANDUM OF POINTS AND AUTHORITIES

Mr. Kepke moved to exclude the testimony, purported co-conspirator statements, and all evidence related to Evatt Tamine, or in the alternative, to continue trial to allow for the production and review of large volumes of discovery seized from Mr. Tamine’s home and electronic devices. (ECF. No. 141.) The government responded that it “does not plan on calling Evatt Tamine as a witness during trial and opposes any continuance of the trial date in this matter.” (ECF No. 143 at 1.) The government adds that Mr. Kepke’s motion should be denied as moot (*id.* at 3), suggesting that the government commits that in addition to not calling Mr. Tamine as a witness, the government also will not offer any purported co-conspirator statements of Mr. Tamine or any documents related to, sent by, or authored by Mr. Tamine. Mr. Kepke accepts the government’s commitment that it will not offer the testimony of, alleged co-conspirator statements of, or any other evidence related to Mr. Tamine. Mr. Kepke accepts and will rely upon each of these representations and his understanding of these representations as noted above, and agrees that excluding Mr. Tamine in all aspects from this trial does reduce the risk of prejudice to Mr. Kepke.

However, Mr. Kepke remains concerned that the government’s obligations pursuant to *Brady* have not been met, given that the government formally requested this information from the Government of Bermuda (ECF No. 143-3), the courts and government of Bermuda relied upon this request in permitting the seizing and reviewing of this evidence, the government previously produced large volumes of documents seized relating to Mr. Tamine pursuant to these very same warrants, and Mr. Tamine is a government cooperator and has been since 2018. It is Mr. Kepke’s understanding that the data on these devices (“Cleared Data”) has been reviewed and cleared through the document review protocol established by the Bermuda Courts, has been available to the U.S. government, and that this is the last batch of data to be processed through the Protocol. However, the government has chosen not to take possession of the Cleared Data or review it for *Brady* material. This may be because Mr. Tamine is a cooperator that turned on the government; after being called by the government in an evidentiary hearing relating to Mr. Brockman, he testified in November 2021 that he did not believe Mr. Brockman (an alleged co-conspirator with

1 Mr. Smith and Mr. Kepke) committed any crimes. *United States v. Brockman*, No. 21-cr-9, ECF
2 No. 252 at 24–28 (S.D. Tx. Mar. 16, 2022). Therefore, Mr. Kepke renews his request that the
3 government review these records for *Brady* material and produce discovery consistent with its
4 discovery obligations.

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6 Respectfully submitted,

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8 Dated: November 14, 2022

By: /s/ Grant P. Fondo
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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the Northern District of California by using the CM/ECF system on **November 14, 2022**. I further certify that all participants in the case are registered CM/ ECF users and that service will be accomplished by the CM/ECF system.

I certify under penalty of perjury that the foregoing is true and correct. Executed on **November 14, 2022**.

/s/ Grant P. Fondo

GRANT P. FONDO